In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 610

JOHN L. SULLIVAN, TAX COMMISSIONER OF THE STATE OF CONNECTICUT, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The United States believes that this Court has jurisdiction of this appeal, and that the question is a substantial one which this Court should review.

The courts below have held that the provisions of Connecticut statutes imposing sales and use taxes are invalid as applied to nonresident servicemen because of the provisions of Section 514 of the Soldiers' and Sailors' Relief Act of 1940, as amended, 50 U.S.C. App. 574. The jurisdiction of this Court on appeal is properly invoked under 28 U.S.C. 1254(2). *City of Detroit* v. *Murray Corp.*, 355 U.S. 489, 491-492.

STATEMENT

The United States instituted this action in the District Court for the District of Connecticut. Its suit was based upon its interest, as sovereign, in maintaining the protections which Congress has provided for members of the armed forces through Section 514. *United States* v. *Arlington County, Commonwealth of Virginia*, 326 F. 2d 929, 931-932 (C.A. 4). Lieutenant Stanley D. Schuman joined in the action as a plaintiff on his own behalf and as a representative of the class of members of the armed forces on active military service and not resident or domiciled in the State of Connecticut. The district court's dismissal of Lieutenant Schuman's claim for lack of jurisdiction was not appealed (J.S. 2A, fn. 1, 27A-29A). By agreement, appellants continue to collect the taxes pending appeal, with provision for refund if the judgment of the district court is ultimately sustained (J.S. 2).

The taxes in question are those imposed on the purchase or use for nonbusiness purposes of personal property in Connecticut. The applications of the tax are illustrated by several examples set forth at trial. Lieutenant Stanley D. Schuman of Nebraska and Commander Kent J. Carroll of Michigan both purchased used motor boats in Connecticut from nondealers. Schuman paid the use tax under protest; Carroll refused to pay. Commander Clyde H. Shaffer of Pennsylvania purchased a new car from a Connecticut dealer who collected the sales tax. Commander Jerome W. Roloff of Wisconsin bought a used car in Florida, and paid a sales tax there. When he

subsequently registered the car in Connecticut, he was required to pay the difference between the Florida sales tax and the Connecticut use tax. Finally, Commander William L. Foster purchased a new car from a Connecticut dealer and at the same time registered it in Texas, his home state, paying a Texas sales tax. Nevertheless, the dealer collected a full Connecticut tax. (J.S. 3A.)

DISCUSSION

The decision below, if sustained, would have wide effect throughout the United States, since nearly every State now has sales and use taxes. Although the examples utilized at the trial involved relatively large amounts of tax, incurred in connection with the purchase of boats and automobiles, no reason is seen why the decisions below would not be applicable to all sales and use taxes imposed on servicemen in stores open to civilians. The problems thus raised are considerable, and worthy of review by this Court.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1968.

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